E-FILED
Wednesday, 04 October, 2017 01:33:51 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

TRAVIS M. TAYLOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 16-cv-2100
	)	
BRENT HUFFINES, et al.,	)	
	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

Plaintiff, Travis M. Taylor, proceeding pro se, filed suit under 42 U.S.C. § 1983 against Defendants, Brent Huffines, Angie Kimps, and Heather Pasel. Plaintiff alleged that Defendants delayed and provided inappropriate medical care for his serious medical needs while detained at the Jerome Combs Detention Center (JCDC) in Kankakee, Illinois. Plaintiff also alleged that Defendants improperly charged him fees in order to receive medication and medical treatment. On June 29, 2016, this Court entered a Merit Review Order [12], finding that Plaintiff stated a claim against Defendants only for deliberate indifference to his serious medical needs in violation of his Fourteenth Amendment rights.

Now before the Court for consideration is Defendants' Motion for Summary Judgment [29], to which Plaintiff has responded [34]. Defendants have filed a reply [35] to Plaintiff's response. Based on the parties' pleadings, depositions, affidavits, and other supporting documents filed with the Court, Defendants' Motion for Summary Judgment is GRANTED.

I. MATERIAL FACTS

Plaintiff has been an inmate at JCDC since September 16, 2015. (Pl.'s Dep. 22:7–9, ECF No. 29-2.) Defendant Huffines is a physician's assistant employed with the medical department at JCDC. (Huffines Aff. ¶ 1, ECF No. 29-1.) At all relevant times, Defendants Kimps and Pasel

were registered nurses employed at JCDC. (Kimps Aff. ¶¶ 1–2, ECF No. 29-1; Pasel Aff. ¶¶ 1–2, ECF No. 29-1.)

On September 29, 2015, Defendant Kimps administered a tuberculosis shot to Plaintiff during his initial health evaluation and assessment at JCDC. (Compl. 33–36, ECF No. 1; Pl.'s Dep. 44:6–13; Kimps Aff. ¶ 6.) During this appointment, Plaintiff told Defendant Kimps that he had "blood coming from [his] behind." (Pl.'s Dep. 27:7–9; Kimps Aff. ¶ 6.) Defendant Kimps told Plaintiff he needed to fill out a medical request form in order to get treatment for his condition. (Pl.'s Dep. 27:14–19; Kimps Aff. ¶ 6.) However, an unknown correctional officer told Plaintiff that there were no medical request forms available at the moment. (Pl.'s Dep. 27:20–28:22.) Plaintiff states that on October 1, 2015, he then filled out and submitted a medical request form after one was given to him by a correctional officer. (*Id.* at 31:12–32:5.) Defendants Kimps and Pasel state that they never received Plaintiff's October 1, 2015, request form, and Plaintiff has not produced a copy of it. (Kimps Aff. ¶ 7; Pasel Aff. ¶ 6.)

On October 7, 2015, Plaintiff submitted another request form since he had not yet received a response from the first one he submitted. (Pl.'s Dep. 33:2–14; Compl. 26.) A few days later, Plaintiff received his request form back, which was signed by Defendant Kimps on October 8, 2015, and included the response, "scheduled." (Compl. 26.) Defendant Kimps scheduled Plaintiff a medical appointment for October 21, 2015. (Kimps Aff. ¶ 17.)

On October 21, 2015, Defendant Huffines examined Plaintiff. (Compl. 30–32; Pl.'s Dep. 52:17–21.) Defendant Huffines noted that Plaintiff said his "rectum feels a little irritated" but that Plaintiff "[d]enie[d] rectal pain." (Compl. 30.) Upon examining Plaintiff's rectum, Huffines noted that it was of normal tone and had no lesions or masses. (*Id.*) A test came back negative for the presence of blood in his stool. (*Id.*; Huffines Aff. ¶ 4.) Huffines diagnosed Plaintiff with a

small uncomplicated external hemorrhoid and prescribed him Proctozone (a hydrocortisone rectal cream). (Compl. 30; Huffines Aff. ¶ 4; Pl.'s Dep. 34:19–22.) Plaintiff states that he was in pain between the time he put in the first request form and the time he initially saw Defendant Huffines. (Pl.'s Dep. 33:15–34:1.)

Within a week of using the Proctozone cream, Plaintiff had a "rash and bumps all over [his] behind." (*Id.* at 35:1–4.) Plaintiff states that he submitted a medical request form complaining of the rash and bumps. (*Id.* at 35:5–15.) On October 31, 2015, Plaintiff stopped using the Proctozone cream because he believed it was the cause of his rash and bumps. (*Id.* at 38:10–21.)

Plaintiff submitted a medical request form on November 1, 2015, and then another one the next day, both times complaining that his rectal bleeding was getting worse. (Compl. 11, 15.) On November 2, 2015, Defendant Kimps responded in writing to Plaintiff's November 1, 2015, medical request form and scheduled Plaintiff an appointment for November 3, 2015. (Kimps Aff. ¶ 9.) On November 3, 2015, Defendant Huffines examined Plaintiff and changed the cream Plaintiff was using to Pharma Pure (a topical anesthetic). (Compl. 11; Pl.'s Dep. 38:22–39:3; Huffines Aff. ¶ 6.) Plaintiff's rash and bumps then went away. (Pl.'s Dep. 38:22–39:3.)

Five months later, on April 4, 2016, Plaintiff filed his complaint in this case. On July 5, 2016, Plaintiff again saw Defendant Huffines and complained of blood in his stools and rectal pain in the shower. (Pl.'s Dep., Ex. 14; Huffines Aff. ¶ 8.) Defendant Huffines diagnosed Plaintiff with blood in his stool, directed him to continue using the Pharma Pure, and referred him to a general surgeon. (*Id.*) On August 17, 2016, Plaintiff was examined at Presence St. Mary's Hospital and was diagnosed with rectal bleeding and scheduled for a colonoscopy. (Pl.'s Dep., Ex. 15; Huffines Aff. ¶ 9.) Plaintiff underwent a colonoscopy on September 16, 2016, and

was then scheduled for a hemorrhoidectomy. (Pl.'s Dep., Ex. 17; Huffines Aff. ¶ 11.) Plaintiff underwent a hemorrhoidectomy on December 2, 2016. (Pl.'s Dep., Ex. 19.) On January 20, 2017, Defendant Huffines examined Plaintiff for a chronic disease follow-up. (Huffines Aff. ¶ 16.) Plaintiff reported that he was still having pain and blood in his stool from his rectum. (*Id.*) Defendant Huffines scheduled Plaintiff for another follow-up appointment with his general surgeon, and since that time, Huffines has had no further interactions with Plaintiff. (*Id.* ¶¶ 16–17.)

II. LEGAL STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A movant may demonstrate the absence of a material dispute through specific cites to admissible evidence, or by showing that the nonmovant "cannot produce admissible evidence to support the [material] fact." Fed. R. Civ. P. 56(c)(B). If the movant clears this hurdle, the nonmovant may not simply rest on his or her allegations in the complaint, but instead must point to admissible evidence in the record to show that a genuine dispute exists. *Id.*; *Harvey v. Town of Merrillville*, 649 F.3d 526, 529 (7th Cir. 2011). "In a § 1983 case, the plaintiff bears the burden of proof on the constitutional deprivation that underlies the claim, and thus must come forward with sufficient evidence to create genuine issues of material fact to avoid summary judgment." *McAllister v. Price*, 615 F.3d 877, 881 (7th Cir. 2010).

At the summary judgment stage, evidence is viewed in the light most favorable to the nonmovant, with material factual disputes resolved in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute of material fact exists when a reasonable juror could find for the nonmovant. *Id.*

III. DELIBERATE INDIFFERENCE STANDARD

"Prison officials violate the Eighth Amendment's proscription against cruel and unusual punishment when their conduct demonstrates 'deliberate indifference to serious medical needs of prisoners.'" *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). To succeed on a claim of deliberate indifference to a serious medical need, a plaintiff must satisfy a test that contains both an objective and subjective component. *Vance v. Peters*, 97 F.3d 987, 991 (7th Cir. 1996). Under the objective component, a plaintiff must demonstrate that his medical condition is sufficiently serious. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). "A serious medical condition is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). Not "every ache and pain or medically recognized condition involving some discomfort can support an Eighth Amendment claim." *Gutierrez*, 111 F.3d at 1371–72. A sufficient amount of pain, however, may rise to the level of being a serious medical condition, even if the treatment consists solely of pain medication. *Cooper v. Casey*, 97 F.3d 914, 916–17 (7th Cir. 1996).

Under the subjective component, the prison official must have acted with a "sufficiently culpable state of mind." *Farmer*, 511 U.S. at 834. In the medical care context, a "deliberate indifference" standard is used. *Estelle*, 429 U.S. at 104. Deliberate indifference may be "manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *Id.* at 104–05. A plaintiff may establish deliberate indifference by showing that "the defendants knew of a substantial risk of harm to the inmate and disregarded the risk." *Greeno*, 414 F.3d at 653. A defendant "must both be aware of facts from which the

inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837. To succeed on a claim of deliberate indifference, a plaintiff "must do more than show negligence, medical malpractice, or disagreement with a prescribed course of treatment." *McDonald v. Hardy*, 821 F.3d 882, 888 (7th Cir. 2016).

IV. ANALYSIS

A. Failure to Exhaust Administrative Remedies

Defendants first argue that Plaintiff has not submitted any written grievances about Defendants' conduct as required by the JCDC inmate grievance procedure. Therefore, they argue, Plaintiff failed to exhaust his administrative remedies, and summary judgment should be granted in Defendants' favor pursuant to Section 1997e(a) of the Prisoner Litigation Reform Act (PLRA). Defendants did not raise failure to exhaust as an affirmative defense in their answer but instead raise it for the first time in their motion for summary judgment. "A prisoner's failure to exhaust administrative remedies before filing a claim constitutes an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure." *Massey v. Helman*, 196 F.3d 727, 735 (7th Cir. 1999). The Seventh Circuit has "stated numerous times that if a defendant does not raise defenses at the time of filing an answer, those defenses are deemed waived." *Castro v. Chi. Hous. Auth.*, 360 F.3d 721, 735 (7th Cir. 2004). However, "a delay in asserting an affirmative defense waives the defense only if the plaintiff was harmed as a result." *Curtis v. Timberlake*, 436 F.3d 709, 711 (7th Cir. 2005). Here, Plaintiff responded to Defendants' affirmative defense in his response to Defendants' motion for summary judgment. Therefore, the Court finds that Plaintiff was not prejudiced as a result of Defendants' delay, and the Court will address the merits of Defendants' argument. *See id.*

Under the PLRA, "[n]o action shall be brought with respect to prison conditions . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C.S. § 1997e(a). "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life," including complaints about medical treatment. *Porter v. Nussle*, 534 U.S. 516, 532 (2002); *Perez v. Wis. Dep't of Corr.*, 182 F.3d 532, 534 (7th Cir. 1999). "In order to exhaust administrative remedies, a prisoner must take all steps prescribed by the prison's grievance system." *Ford v. Johnson*, 362 F.3d 395, 397 (7th Cir. 2004). The inmate grievance procedure at JCDC is outlined in the JCDC Inmate Handbook ("Handbook"). (Pl.'s Dep., Ex. 1, at 24–25.) All inmates are given a copy of the Handbook when they arrive at JCDC. (Kolitwenzew Aff. ¶ 4.) Basically, to file a grievance, an inmate must fill out and submit a pre-printed grievance form within five days of the occurrence related to the grievance. (Pl.'s Dep., Ex. 1, at 24–25.)

Plaintiff admits that he never submitted a grievance about any of Defendants' alleged conduct. (Pl.'s Resp. ¶ 44, ECF No. 34.) However, Plaintiff asserts that he was never given a Handbook upon entering JCDC (*Id.*) Therefore, he argues, he cannot be held accountable for not following the grievance procedure because he was not aware there was a grievance procedure. (*Id.* at 13.) In three unpublished opinions, the Seventh Circuit has stated that a prisoner's lack of awareness of a grievance procedure does not excuse compliance, so long as there is no affirmative misconduct on the part of prison officials to prevent an inmate from learning about and pursuing a grievance procedure. *Hudson v. Corizon Med. Servs.*, 557 F. App'x 573, 574–75 (7th Cir. 2014); *McSwain v. Schrubbe*, 382 F. App'x 500, 503 (7th Cir. 2010); *Twitty v. McCoskey*, 226 F. App'x 594, 596 (7th Cir. 2007) (quoting *Chelette v. Harris*, 229 F.3d 684, 688 (8th Cir. 2000)).

Here, Plaintiff has not alleged any affirmative misconduct of Defendants that prevented him from learning about and pursuing the grievance procedures at JCDC. Accordingly, Plaintiff's assertion that he did not receive a Handbook is insufficient to excuse his noncompliance with JCDC's grievance procedures. Therefore, the Court finds that Plaintiff failed to exhaust his administrative remedies, and the Court could dismiss his case without prejudice on those grounds. *See Ford*, 362 F.3d at 401. However, because Defendants' motion for summary judgment was fully briefed on the merits and Plaintiff has had a full and fair opportunity to respond to the substance of the motion, the Court will proceed to address the merits of the case "in the interests of judicial economy and finality." *See Fluker v. Cty. of Kankakee*, 741 F.3d 787, 793 (7th Cir. 2013).

B. Deliberate Indifference to Plaintiff's Serious Medical Needs

Plaintiff's main allegation is that after he first complained to Defendant Kimps on September 29, 2015, about "blood coming from [his] behind," it took approximately three weeks for Defendant Huffines to examine him. (Compl.; Pl.'s Dep. 27:7–9.) Plaintiff alleges that during this delay, he "was in pain," and therefore, Defendants were deliberately indifferent to his serious medical need.

1. Plaintiff's claim against Defendant Huffines

Defendant Huffines states that he was first notified that Plaintiff was experiencing rectal bleeding when he examined Plaintiff on October 21, 2015. (Huffines Aff. ¶¶ 4–5.) After examining Plaintiff on that day, Defendant Huffines diagnosed Plaintiff with a small uncomplicated external hemorrhoid and prescribed him Proctozone. (*Id.* ¶ 4; Compl. 30.) Defendant Huffines argues that after diagnosing Plaintiff with hemorrhoids, he was responsive to Plaintiff's complaints and provided Plaintiff appropriate medical treatment. Plaintiff does not

really dispute that the treatment he received from Huffines was adequate. During his deposition, Plaintiff was asked whether there was anything wrong with the treatment he received from Huffines. (Pl.'s Dep. 74:2–8.) At first, Plaintiff responded, "Not off the top of my head I can't think of anything." (*Id.*) When pressed further, Plaintiff pointed out that the Proctozone he was given gave him a rash and bumps. (*Id.* at 74:9–22.) Plaintiff acknowledged, however, that Huffines switched the cream Plaintiff was using when he told Huffines about the rash and bumps on November 3, 2015. (*Id.* at 74:23–75:17.) Plaintiff also acknowledged that Huffines referred him to a general surgeon when Plaintiff next complained of blood in his stools approximately eight months later on July 5, 2016. The Court finds that this evidence is insufficient to support a claim of deliberate indifference.

Plaintiff's main argument, however, is that if Huffines had looked at the medical request form that Plaintiff submitted on October 1, 2015, then Huffines "would have known that . . . Plaintiff was in a lot of pain." (Pl.'s Resp. 17.) Therefore, Plaintiff argues, because Huffines waited until October 21, 2015, to see Plaintiff, he was deliberately indifferent to Plaintiff's pain. There is no evidence, however, that Huffines ever saw Plaintiff's medical request form or that Huffines knew of Plaintiff's condition prior to seeing Plaintiff on October 21, 2015. Moreover, Huffines states that the first time he was notified of Plaintiff's rectal bleeding was when he saw Plaintiff on October 21, 2015. When Plaintiff was asked during his deposition what Huffines did to cause the delay in seeing Plaintiff, Plaintiff's response was, "He's the doctor." (Pl.'s Dep. 73:15–21.) This suggests that Plaintiff is only speculating that Huffines caused the delay, and Plaintiff has not presented any evidence to support his assertion. Speculation is insufficient to defeat a motion for summary judgment. *See Davis v. Carter*, 452 F.3d 686, 697 (7th Cir. 2006) ("[W]hen the evidence provides for only speculation or guessing, summary judgment is

appropriate."). Therefore, the Court finds that no rational juror could conclude that Huffines caused the delay in providing Plaintiff treatment or that he was deliberately indifferent to Plaintiff's medical needs.

2. Plaintiff's claims against Defendants Kimps and Pasel

Plaintiff argues that Defendants Kimps and Pasel were deliberately indifferent because whenever he complained to them about his rectal bleeding, they would just tell him to fill out a medical request form. Defendants Kimps and Pasel argue that they were only following JCDC policy when they told Plaintiff he needed to fill out a medical request form to request a medical appointment. The JCDC Inmate Handbook states that if an inmate would like to request a medical appointment, he "must complete a Sick Call Slip/Request form and place it in the lock box in [his] housing unit." (Pl.'s Dep., Ex. 1, at 30.) The Seventh Circuit has indicated that a defendant who acts merely on the basis of a prison's stated policy does not have the requisite culpable state of mind to support a claim of deliberate indifference. *See Norfleet v. Webster*, 439 F.3d 392, 397 (7th Cir. 2006). Here, there is no evidence that Defendants Kimps and Pasel acted on any basis other than JCDC's policy, and Plaintiff is not challenging the policy itself. There is also no evidence that Plaintiff's condition was an emergency such that he needed immediate medical attention. Therefore, the Court finds that no rational juror could conclude that Defendants Kimps and Pasel were deliberately indifferent when they informed Plaintiff of JCDC's policy that he needed to submit a medical request form to request a medical appointment.

Plaintiff also argues that Defendant Kimps was deliberately indifferent because if she would have immediately told Defendant Huffines about Plaintiff's rectal bleeding when Plaintiff complained to her about it on September 29, 2015, or alternatively, when Plaintiff submitted his

first medical request form on October 1, 2015, then Huffines would have seen Plaintiff sooner and Plaintiff would not have had to suffer in pain for three weeks. Defendant Kimps argues that when Plaintiff was first seen by Huffines on October 21, 2015, Plaintiff was diagnosed with hemorrhoids—a non-serious medical condition—so a few weeks' delay in getting him treatment is not actionable under a claim of deliberate indifference.

"A delay in treatment may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate's pain." *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). "[T]he length of delay that is tolerable depends on the seriousness of the condition and the ease of providing treatment." *Id.* To succeed on a claim of delayed medical treatment, a plaintiff must "offer 'verifying medical evidence' that the delay (rather than the inmate's underlying condition) caused some degree of harm." *Williams v. Liefer*, 491 F.3d 710, 714–15 (7th Cir. 2007).

Here, Plaintiff has presented evidence that he was diagnosed with rectal bleeding on August 17, 2016, which required a colonoscopy and hemorrhoidectomy to treat. (Pl.'s Dep., Ex. 15.) Defendants concede that rectal bleeding is a serious medical condition. (Defs.' Mot. Summ. J. 11, ECF No. 29.) However, Plaintiff was first diagnosed with rectal bleeding almost ten months after the period he is alleging delayed medical treatment. When Defendant Huffines first examined Plaintiff on October 21, 2015, Huffines noted that Plaintiff said his rectum feels a little irritated but that Plaintiff denied rectal pain. (Compl. 30.) Upon examination, Huffines noted that Plaintiff's rectum was of normal tone and had no lesions or masses. (*Id.*) A test came back negative for the presence of blood in his stool. (*Id.*) Based on these findings, Huffines diagnosed Plaintiff with only a small uncomplicated external hemorrhoid and prescribed him hydrocortisone rectal cream. (*Id.*) Plaintiff has not presented any other medical evidence which

would verify that the three-week delay in providing him treatment for his hemorrhoid caused him any degree of harm. Accordingly, the Court finds that no rational juror could conclude that Defendant Kimps was deliberately indifferent when she scheduled Plaintiff an appointment for October 21, 2015, which was, at most, three weeks after he first complained of his condition.

C. Qualified Immunity

The Court finds that Plaintiff has not presented sufficient evidence to show that Defendants Huffines, Kimps, and Pasel were deliberately indifferent to a serious medical need. Therefore, the Court need not address whether Defendants are entitled to qualified immunity. *See Van den Bosch v. Raemisch*, 658 F.3d 778, 787 n.9 (7th Cir. 2011).

IT IS THEREFORE ORDERED:

1) Defendants' Motion for Summary Judgment [29] is GRANTED pursuant to Federal Rule of Civil Procedure 56. The Clerk of the Court is directed to enter judgment in favor of Defendants and against Plaintiff. The case is terminated, with the parties to bear their own costs. All deadlines and internal settings are vacated. All pending motions not addressed in this Order are denied as moot. Plaintiff remains responsible for any unpaid balance of the $350 filing fee, pursuant to this Court's text order on May 18, 2016.

2) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal in forma pauperis MUST identify the issues Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *see also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999) (stating that an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith"); *Walker v O'Brien*, 216 F.3d 626,

632 (7th Cir. 2000) (providing that a good faith appeal is an appeal that "a reasonable person could suppose . . . has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

October 4, 2017

s/ James E. Shadid

ENTERED

JAMES E. SHADID
UNITED STATES DISTRICT JUDGE